

the one who takes such step raises that question.

Mr. [John E.] RANKIN [of Mississippi]. Mr. Speaker, a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. RANKIN. As I understand the situation, whether there is a quorum present or not, unless this amendment is agreed to the resolution does not become final until this amendment is disposed of. That is correct, is it not?

The SPEAKER pro tempore. The gentleman is correct.

Mr. RANKIN. And therefore we would not be in a position to recess for the time mentioned until this amendment is disposed of one way or the other.

The SPEAKER pro tempore. The understanding of the Chair is the same as that of the gentleman from Mississippi.

The gentleman from Georgia moves that the House concur in the Senate amendment.

The question is on the motion of the gentleman from Georgia.

Mr. HOFFMAN. Mr. Speaker, I make the point of order that a quorum is not present.

The SPEAKER pro tempore. The Chair will count.

Mr. HOFFMAN. Mr. Speaker, I withdraw the point of no quorum for the time being.

The SPEAKER pro tempore. Without objection, further consideration of the concurrent resolution (H. Con. Res. 75) will be withdrawn.

There was no objection.

*Parliamentarian's Note:* The Speaker pro tempore, having laid

the Senate amendment before the House as privileged, could have withdrawn it as a matter of right without unanimous consent since no action had been taken thereon.

## § 12. August Recess

The Legislative Reorganization Act of 1970 provides for a *sine die* adjournment, or (in an odd-numbered year) for an adjournment of slightly over a month (from that Friday in August which is at least 30 days before Labor Day to the Wednesday following Labor Day) unless the Nation is in a state of war, declared by Congress.<sup>(1)</sup> Prior to that revision, the 1946 Legislative Reorganization Act provided for adjournment *sine die* of the two Houses not later than the last day of July each year, except during time of war or a national emergency proclaimed by the President. Presidentially declared emergencies negated operation of the provision.<sup>(2)</sup>

Congress may waive the current requirement and make other determinations regarding its August adjournment.<sup>(3)</sup> In an odd-numbered year a concurrent resolution

1. 84 Stat. 11140 § 461(b). See also *House Rules and Manual* § 1106 (2007).

2. See § 6.2, *supra*, and § 16, *infra*.

3. *House Rules and Manual* § 84 (2007).

conforming to this requirement is called up as privileged and requires a yeas and nays vote for adoption<sup>(4)</sup> and is not debatable,<sup>(5)</sup> but the House may adjourn by simple motion on July 31 to meet on Aug. 1, and so the statute has no binding effect absent subsequent action.<sup>(6)</sup> In even-numbered and some odd-numbered years, the House has agreed to concurrent resolutions waiving the provisions of this law to provide that the two Houses shall not adjourn for more than three days or *sine die* until they have adopted a concurrent resolution to that effect.<sup>(7)</sup> To obviate the requirement of a concurrent resolution waiving the requirement, the House has included the language “in consonance with section 132(a)” in its concurrent resolution providing for an August adjournment.<sup>(8)</sup>

### § 12.1 The House adopted an “August recess” resolution by the yeas and nays, “in consonance with” §132 of the Legislative Reorganization

4. See §§ 12.2, 12.5, *infra*.
5. See § 12.2, *infra*. See also *House Rules and Manual* § 1106 (2007).
6. See § 12.3, *infra*.
7. *House Rules and Manual* § 1106 (2007).
8. See § 12.1, *infra*. See also *House Rules and Manual* § 1106 (2007).

### Act of 1946, on July 31 of an odd-numbered year requiring a roll call vote.

On July 31, 1997,<sup>(1)</sup> the House adopted the following concurrent resolution:

PROVDING FOR ADJOURNMENT OF THE HOUSE FROM AUGUST 1, OR AUGUST 2, 1997, TO SEPTEMBER 3, 1997, AND ADJOURNMENT OR RECESS OF THE SENATE FROM JULY 31, AUGUST 1, OR AUGUST 2, 1997, TO SEPTEMBER 2, 1997

Mr. [Porter J.] GOSS [of Florida]. Mr. Speaker, I offer a privileged concurrent resolution (H. Con. Res. 136) and I ask for its immediate consideration.

The Clerk read the concurrent resolution, as follows:

#### H. CON. RES. 136

*Resolved by the House of Representatives (the Senate concurring), That, in consonance with section 132(a) of the Legislative Reorganization Act of 1946, when the House adjourns on the legislative day of Friday, August 1, 1997 or Saturday, August 2, 1997, pursuant to a motion made by the majority leader or his designee, it stand adjourned until noon on Wednesday, September 3, 1997, or until noon on the second day after members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the Senate recesses or adjourns at the close of business on Thursday, July 31, 1997, Friday, August 1, 1997, or Saturday, August 2, 1997, pursuant to a motion made by the majority leader*

1. 143 CONG. REC. 17018, 105th Cong. 1st Sess.

or his designee in accordance with this concurrent resolution, it stand recessed or adjourned until noon on Tuesday, September 2, 1997, or until such time on that day as may be specified by the majority leader or his designee in the motion to recess or adjourn, or until noon on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Speaker of the House and the majority leader of the Senate, acting jointly after consultation with the minority leader of the House and the minority leader of the Senate, shall notify the Members of the House and Senate, respectively, to reassemble whenever, in their opinion, the public interest shall warrant it.

The SPEAKER pro tempore (Mr. LAHOOD).<sup>(2)</sup> Pursuant to section 132 of the Legislative Reorganization Act of 1946, as amended, the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 403, nays 16, not voting 15, as follows:

[Roll No. 351] . . .

So the concurrent resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

*Parliamentarian's Note:* § 132 of the Legislative Reorganization Act of 1946 provides that “unless otherwise provided by the Congress, the two houses shall (1) adjourn *sine die* not later than July

31 of each year; or (2) in the case of an odd-numbered year, provide, not later than July 31 of such year, by concurrent resolution adopted in each house by rollcall vote, for [an August recess].” Consideration of the adjournment resolution on July 31 meant that (1) the resolution could be treated as privileged; (2) the question of adopting the resolution required a roll call vote; and (3) a concurrent resolution permitting the two Houses to remain in session beyond July 31 in an odd-numbered year was not necessary.<sup>(3)</sup>

**§ 12.2 Pursuant to the Legislative Reorganization Act of 1946, as amended, a concurrent resolution providing in an odd-numbered year for an adjournment for the month of August or until sooner recalled by the joint leadership is called up as privileged, is**

3. For forms of resolutions permitting the two Houses to remain in session beyond July 31 in an odd-numbered year, see, *e.g.*, § 12.2, *infra*, and 141 CONG. REC. 21223, 104th Cong. 1st Sess., July 31, 1995. Notwithstanding the ostensible requirements of § 132, the House could adjourn by simple motion on July 31 to meet on Aug. 1 of an odd-numbered year. See § 12.3, *infra*.

For discussion of the *sine die* requirement in even-numbered years, see § 16, *infra*.

2. Ray LaHood (IL).

**not debatable, and requires a yeas and nays vote for adoption if considered prior to Aug. 1.**

On July 31, 1991,<sup>(1)</sup> the following privileged concurrent resolution was laid before the House:

ADJOURNMENT OF THE HOUSE  
FROM FRIDAY, AUGUST 2, SATURDAY, AUGUST 3, SUNDAY, AUGUST 4, OR MONDAY, AUGUST 5, 1991, TO WEDNESDAY, SEPTEMBER 11, 1991

Mr. [Richard A.] GEPHARDT [of Missouri]. Mr. Speaker, I send to the desk a privileged concurrent resolution (H. Con. Res. 191) and ask for its immediate consideration.

The Clerk read the concurrent resolution, as follows:

#### H. CON. RES. 191

*Resolved by the House of Representatives (the Senate concurring),* That when the House adjourns on Friday, August 2, Saturday, August 3, Sunday, August 4, or Monday, August 5, 1991, pursuant to a motion made by the Majority Leader or his designee, in accordance with this resolution, it stand adjourned until noon on Wednesday, September 11, 1991, or until noon on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Speaker of the House, after consultation with the Minority Leader of the House, shall notify the Members of the House to reassemble whenever, in their opinion, the public interest shall warrant it.

1. 137 CONG. REC. 20675, 20676, 102d Cong. 1st Sess.

#### PARLIAMENTARY INQUIRY

Mr. [Robert S.] WALKER [of Pennsylvania]. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER.<sup>(2)</sup> The gentleman will state his parliamentary inquiry.

Mr. WALKER. Mr. Speaker, is the resolution before the House debatable?

The SPEAKER. No. The Chair will tell the gentleman, it is not debatable. The vote must be taken by the yeas and nays.

Mr. WALKER. The vote must be taken by the yeas and nays, but the resolution is not subject to an hour's debate?

The SPEAKER. The resolution is not subject to an hour's debate, the gentleman is correct.

Mr. WALKER. Mr. Speaker, I thank the Chair.

The SPEAKER. Under the statute, this vote must be taken by the yeas and nays.

The question is on the concurrent resolution.

The vote was taken by electronic device, and there were—yeas 406, nays 16, not voting 11, as follows:

[Roll No. 246] . . .

So the concurrent resolution was agreed to.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. MONTGOMERY).<sup>(3)</sup> Without objection, a motion to reconsider is laid on the table.

Mr. WALKER. Mr. Speaker, I object.

2. Thomas S. Foley (WA).

3. G. V. (Sonny) Montgomery (MS).

The SPEAKER pro tempore. Objection is heard.

Ms. [Louise M.] SLAUGHTER of New York. Mr. Speaker, I move to reconsider the vote by which the concurrent resolution was agreed to.

Mr. [Peter H.] KOSTMAYER [of Pennsylvania]. Mr. Speaker, I move that the motion to reconsider be laid on the table.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Pennsylvania [Mr. KOSTMAYER], to lay on the table the motion offered by the gentleman [sic] from New York [Mr. [sic] SLAUGHTER].

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. WALKER. Mr. Speaker, on that I demand tellers.

Mr. [Harold L.] VOLKMER [of Missouri]. Mr. Speaker, on that I demand the yeas and nays.

The SPEAKER pro tempore. The demand for the yeas and nays takes precedence.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 391, nays 22, not voting 20, as follows:

[Roll No. 247]

**§ 12.3 Each House may, under the Constitution, by simple motion on July 31 adjourn “from day to day” to meet on Aug. 1, unless provided otherwise by concurrent resolution in accordance with a law requiring an “August recess”.**

On July 31, 1991,<sup>(1)</sup> the following proceedings occurred:

#### ADJOURNMENT

Mr. [Richard A.] GEPHARDT [of Missouri]. Mr. Speaker, I move that the House do now adjourn.

The SPEAKER pro tempore.<sup>(2)</sup> The question is on the motion offered by the gentleman from Missouri [Mr. GEPHARDT].

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. [Dan] ROSTENKOWSKI [of Illinois]. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 342, nays 70, not voting 21, as follows:

[Roll No. 248] . . .

So the motion was agreed to.

The result of the vote was announced as above recorded.

Accordingly (at 7 o'clock and 10 minutes p.m.) under the Constitution, the House adjourned until tomorrow, Thursday, August 1, 1991, at 10 a.m.

**§ 12.4 By unanimous consent, the House considered, and by voice vote agreed to, a concurrent resolution providing, notwithstanding the requirements of the Legislative Reorganization Act of 1970<sup>(1)</sup>**

1. 137 CONG. REC. 20677, 20678, 102d Cong. 1st Sess.

2. G. V. (Sonny) Montgomery (MS).

1. 2 USC § 198.

**that the two Houses adopt, not later than July 31 of an odd-numbered year by roll call vote, a concurrent resolution adjourning for August, that the House and the Senate shall not adjourn for more than three days or *sine die* until they have adopted a subsequent concurrent resolution to that effect.**

On July 29, 1987,<sup>(2)</sup> the Majority Leader called up by unanimous consent House Concurrent Resolution 170, waiving the requirement of the Legislative Reorganization Act of 1970 for “August recess” by roll call by July 31:

RELATIVE TO ADJOURNMENT  
TO A DATE CERTAIN DURING  
THE REMAINDER OF THE  
100TH CONGRESS

Mr. [Thomas S.] FOLEY [of Washington]. Mr. Speaker, I offer a concurrent resolution (H. Con. Res. 170), and I ask unanimous consent for its immediate consideration.

The SPEAKER pro tempore (Mr. TRAXLER).<sup>(3)</sup> The Clerk will report the concurrent resolution.

The Clerk read the concurrent resolution, as follows:

H. CON. RES. 170

*Resolved by the House of Representatives (the Senate concurring), That notwithstanding the provisions*

of section 132(a) of the Legislative Reorganization Act of 1946 (2 U.S.C. 198), as amended by section 461 of the Legislative Reorganization Act of 1970 (Public Law 91-510; 84 Stat. 1193), the House of Representatives and the Senate shall not adjourn for a period in excess of three days, or adjourn sine die, until both Houses to Congress have adopted a concurrent resolution providing either for an adjournment (in excess of three days) to a day certain or for adjournment sine die.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

Mr. [Robert H.] MICHEL [of Illinois]. Mr. Speaker, reserving the right to object, and I do not intend to object, but might I just use this opportunity to ask the gentleman from Washington [Mr. FOLEY], the distinguished majority leader, how the program unfolds for the balance of this day and tomorrow?

Mr. FOLEY. Mr. Speaker, will the gentleman yield?

Mr. MICHEL. Mr. Speaker, I yield to the gentleman from Washington.

Mr. FOLEY. Mr. Speaker, it is hoped that we will adopt this resolution which dispenses with the statutory July 31 sine die adjournment of the act, an anachronism unfortunately of other years and times but still a part of the law.

After we dispose of this matter, we have no legislative program for tonight. Tomorrow we will continue to consider Price-Anderson, and we would hope to conclude at a fairly early hour tomorrow. . . .

Mr. [Robert S.] WALKER [of Pennsylvania]. Mr. Speaker, reserving the right to object, if we would fail to pass the resolution before the House, would

2. 133 CONG. REC. 21459, 21460, 100th Cong. 1st Sess.

3. Bob Traxler (MI).

the Congress actually have to adjourn as of the end of this month?

Mr. FOLEY. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from Washington.

Mr. FOLEY. Mr. Speaker, I thank the gentleman for yielding.

That is an interesting question. The gentleman always asks interesting questions.

I do not have a very interesting answer.

Mr. WALKER. I would say to the gentleman that I have many constituents who think the country would be better off if in fact we lived within the law.

Mr. FOLEY. I know there is another theory that a former distinguished Member of the other body, Senator Anderson, held; and that was that the worst mistake that was ever made by the Congress in this century was to air-condition the Capitol in 1938.

Since we are now air-conditioned, and since this is unfortunately a legal anachronism, we would hope that the Members would treat it as such and not attempt to take a premature departure from the legislative business.

Mr. WALKER. Further reserving the right to object, why do we not just repeal the anachronism? It seems to me it would make far more sense rather than go through this exercise, if in fact it would cause major problems for the House to carry out what is in the law.

Mr. FOLEY. I think that is an excellent suggestion, and it was the subject of discussion between the distinguished Republican leader and myself just before this matter was brought forward.

I think we are in essential agreement that it should be repealed; and except for the proper procedures, I would not want to try to do it tonight.

The gentleman's suggestion is very well taken. It is a total anachronism and should be repealed.

Not to engage in further anecdotes, but there was a former Member of this body, I am told, who always adjourned himself personally on the 31st of July in accordance with the statute not regarding the action of the House or the other body.

The Member used to go to the well and say that it was his purpose to obey the law as well as to make it; and since the statute was in existence, he hereby adjourned himself sine die.

The distinguished gentleman died in office.

Mr. MICHEL. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from Illinois.

Mr. MICHEL. Mr. Speaker, I thank the gentleman for yielding.

That gentleman was from my home State of Illinois, and used to sit invariably right where the gentleman from Pennsylvania [Mr. GEKAS] is sitting now.

The gentleman's name is Noah Mason, a former schoolteacher, very precise; and I can just about mimic him perfectly as he used to get up, as you indicated, on the floor and say, "Mr. Speaker, it is July 31, and I just want to inform the membership that this Member is going to abide by the law and return to his home district for the benefit of his constituents" and so forth like that.

□ 1740

Mr. WALKER. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

The SPEAKER pro tempore. The question is on the concurrent resolution.

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

*Parliamentarian's Note:* While Rep. Foley did not directly respond to Rep. Walker's question whether Congress would be forced to adjourn at the end of July absent adoption of this concurrent resolution, it has been the consistent opinion of House and Senate Parliamentarians that the constitutional requirement that neither House can adjourn for more than three days without the consent of the other (by concurrent resolution) would mandate that the House and Senate would not be forced to adjourn *sine die* under this law. Indeed, each House could by simple motion adjourn overnight to meet on Aug. 1 or could by unanimous consent or motion adjourn for not more than three days. Neither House has treated § 132 as the equivalent of a *sine die* adjournment resolution adopted by both Houses, since no message is transmitted between the two Houses establishing that date as the *sine die* adjournment

day and essentially because the enactment of such a rule separately in each House does not constitute contemporaneous "consent" within the meaning of art. I, § 5 of the Constitution. Absent specific incorporation by both Houses of such statutory provisions enacted in a prior Congress, constituting contemporaneous consent in the current Congress, the Parliamentarians agreed that no point of order would lie against a motion on July 31<sup>(4)</sup> to adjourn overnight absent adoption of a § 132 concurrent resolution, and that language is directory and not mandatory in nature. Since it is not mandatory, no privilege need be attached to the § 132 concurrent resolution described herein permitting the two Houses to remain in session. In the 101st Congress, the House did pass a joint resolution reported from the Committee on Rules repealing this statutory requirement, but the Senate did not act on the measure.<sup>(5)</sup>

**§ 12.5 A Senate concurrent resolution providing for an adjournment of the two Houses from the first Friday in August until the second day after Labor Day in an odd-**

4. See § 12.3, *supra*.

5. See 136 CONG. REC. 20178, 20179, 101st Cong. 2d Sess., July 27, 1990 (H.J. Res. 7).



**numbered year (see 2 USC § 198), or until notified to reassemble pursuant to a joint agreement of the majority or minority leadership of the two Houses, requires a yeas and nays vote for adoption.**

On July 30, 1973,<sup>(1)</sup> the House adopted the following concurrent resolution, called up as privileged from the Speaker's table by the Majority Leader:

Mr. [Thomas P.] O'NEILL [Jr., of Massachusetts]. Mr. Speaker, I call up the Senate concurrent resolution (S. Con. Res. 42) providing for a conditional adjournment of the two Houses from August 3 until September 5, 1973, and ask for its immediate consideration.

The Clerk read the Senate concurrent resolution as follows:

S. CON. RES. 42

*Resolved by the Senate (the House of Representatives concurring), That when the two Houses adjourn on Friday, August 3, 1973, they shall stand adjourned until 12:00 noon on Wednesday, September 5, 1973, or until 12:00 noon on the second day after their respective Members are notified to reassemble in accordance with section 2 of this resolution, whichever event first occurs.*

SEC. 2. The President pro tempore of the Senate and the Speaker of the House of Representatives shall notify the Members of the Senate and the House, respectively, to reassemble whenever in their opinion legislative expediency shall warrant it or when-

ever the majority leader of the Senate and the majority leader of the House, acting jointly, or the minority leader of the Senate and the minority leader of the House, acting jointly, file a written request with the Secretary of the Senate and the Clerk of the House that the Congress reassemble for the consideration of legislation.

The SPEAKER.<sup>(2)</sup> The question is on concurring in the Senate concurrent resolution. Under the rules of the House, this vote must be taken by the yeas and nays.

The vote was taken by electronic device, and there were—yeas 370, nays, 22, not voting 41, as follows:

[Roll No. 401] . . .

So the concurrent resolution was concurred in.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

*Parliamentarian's Note:* Beginning in 1976, this joint minority leadership recall provision was eliminated from concurrent resolutions providing joint House-Senate recall authority in subsequent Congresses, where the minority role was consultative only.

**§ 12.6 The vote on a House concurrent resolution providing for an adjournment of the two Houses for the August recess in an odd-numbered year must be taken by the yeas and nays.**

1. 119 CONG. REC. 26657, 26658, 93d Cong. 1st Sess.

2. Carl Albert (OK).

On July 30, 1971,<sup>(1)</sup> the House adopted the concurrent resolution called up as privileged by the Majority Leader, the Speaker indicating that a roll call vote was required under the applicable statute, 2 USC § 198:

Mr. [Hale] BOGGS [of Louisiana]. Mr. Speaker, I offer a privileged concurrent resolution (H. Con. Res. 384) and ask for its immediate consideration.

The Clerk read the concurrent resolution as follows:

#### H. CON. RES. 384

*Resolved by the House of Representatives (the Senate concurring), That when the two Houses adjourn on Friday, August 6, 1971, they stand adjourned until 12 o'clock meridian on Wednesday, September 8, 1971.*

The SPEAKER.<sup>(2)</sup> Under the rules and under the law, this vote must be taken by the yeas and nays.

The question is on the resolution.

The question was taken; and there were—yeas 334, nays 41, not voting 58, as follows:

[Roll No. 224] . . .

So the concurrent resolution was agreed to. . . .

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

1. 117 CONG. REC. 28332, 92d Cong. 1st Sess.
2. Carl Albert (OK).

### § 13. Conditional Adjournments; Recall

On occasion, a concurrent resolution (or a Senate amendment to a concurrent resolution) providing for adjournment to a date certain included a condition that a designated legislative action first be completed before a motion to adjourn pursuant to the resolution could be offered.<sup>(1)</sup> Inclusion of such a condition does not destroy the privilege of the resolution (or of the Senate amendment). Such a condition, when included in the original text of the resolution (or Senate amendment), is to be distinguished from an amendment offered from the floor to a concurrent resolution which does not have such a contingency, where the amendment proposes to render the adjournment authority provided in the resolution contingent upon completion of a legislative action. In such a case, the proposed amendment would be subject to a point of order as not being germane to the pending concurrent resolution.<sup>(2)</sup>

The two Houses have adjourned to a date certain, with a provision that they may be reassembled earlier by the joint leadership (the Speaker and Majority Leader of

1. See § 10.9, *supra*.
2. See § 11.2, *supra*.